

**ORDINANCE NO. 42-98
CHAPTER 18
ARTICLE V**

TO AMEND CHAPTER 18 OF THE 1984 DETROIT CITY CODE BY ADDING DIVISION 5 ENTITLED, 'PROMPT PAYMENT OF VENDORS' FOR GOODS AND SERVICES WHICH CONSISTS OF SECTIONS 18-5-71 THROUGH 18-5-79

AN ORDINANCE to amend Chapter 18, Article v, of the 1984 Detroit City Code by adding Division 5 entitled 'Prompt Payment of Vendors', which shall consist of Sections 18-5-71 through 18-5-79, to define 'Detroit-based business', 'responsible person', 'small business concern', and 'vendor'; to provide that the Finance Director shall adopt rules and procedures to ensure that departments, agencies, and their employees perform their responsibilities under this division; to require that all City purchase orders and contracts make reference to this division; to provide for the prompt payment to vendors who provide goods or services to the City of Detroit; to provide a procedure for the correction of error and defects that are contained within vendor invoices; to require the payment of interest on all overdue payments to vendors who provide goods or services to the City of Detroit; to provide for a procedure in the event of a contract or invoice dispute; to require that vendors who contract with a Detroit-based business or a small business concern for partial performance of the vendor's contract with the City of Detroit shall provide provisions within those contracts which are commensurate with the prompt payment and interest provisions in this division; and to limit this division to contracts entered into or purchase orders issued after the effective date of this division.

DIVISION 5. PROMPT PAYMENT OF VENDORS

Sec. 18-5-71. Definitions.

For purposes of this division, the following words and phrases shall have the meaning ascribed to them by this section:

Detroit-based business means a business which pays city income taxes on the business's net profits and pays city property taxes on 1) a plant or office and equipment which are ordinarily required for the furnishing of the goods or the performance of the services required by the contract and referred to in the application for certification as a Detroit-based business, or 2) other real or personal property in the city equivalent in value to such plant or office and equipment, for not less than one (1) taxable year immediately prior to the date of the application for certification. In addition, a Detroit-based business shall satisfy one (1) of the following five (5) criteria:

1. Provide verification that an existing inventory of the product(s) which the business offers to the city is physically located at a city-site; or
2. Provide verification of the ability of the business to service/repair product(s) to be sold to the city at a city-site; or
3. Provide verification that the business has an adequate number of employees based at its city-site to perform the services indicated in its application for certification; or
4. Provide verification that its headquarters is located within the city; or
5. Provide verification that a majority (fifty-one (51) percent) of the full-time employees, chief officer, and managers of the business regularly work and conduct business in the city.

Responsible person means the city employee(s) who is or are assigned responsibility for the administration of a particular contract or purchase order, including the processing of payment under the contract or purchase order, and the monitoring of the vendor's performance under the contract or purchase order.

Small business concern means a business which:

1. Has been in existence and operating for at least one (1) year prior to the date of application for certification as a small business concern; and
2. Is one (1) of the following:
 - a) A manufacturing business which, for the three (3) fiscal years preceding the date of application for certification, has provided full-time employment to not more than five hundred (500) persons;
 - b) A general construction business which, for the three (3) fiscal years preceding the date of application for certification, has average annual gross receipts of not more than seventeen million dollars (\$17,000,000); or
 - c) A specialty construction business whose average annual gross receipts have not exceeded seven million dollars (\$7,000,000) in the three (3) fiscal years preceding the date of application for certification; or
 - d) A wholesale business which, for the three (3) fiscal years preceding the date of application for certification, has provided full-time employment to not more than one hundred (100) persons; or
 - e) A retail business which, for the three (3) fiscal years preceding the date of application for certification, has average annual gross receipts of not more than five million dollars (\$5,000,000); or
 - f) A service business, other than professional, which, for the three (3) fiscal years preceding the date of application for certification, has average gross receipts of not more than five million dollars (\$5,000,000).

Vendor means a natural person or persons who, or sole proprietorship, corporation, partnership, limited partnership, joint venture, limited liability corporation or other business enterprise or legal entity however organized which, is a party to a written contract with the City of Detroit to furnish equipment, supplies, goods, services, demolition, paving, construction, or disposition of equipment and supplies unsuitable for public use.

(Ord. No. 42-98, § 1, 12-2-98)

Sec. 18-5-72. Finance director to adopt rules and procedures.

- a) In accordance with Section 2-111 of the 1997 Detroit City Charter, the finance director shall adopt rules and procedures to clarify the responsibility of departments, agencies and their employees regarding this division, to ensure that the satisfactory performance of a contract with a vendor is promptly determined and certified, and to ensure that payment to a vendor is promptly authorized.
- b) Such rules and procedures shall be adopted within ninety (90) days of enactment of this division. The adopted rules and procedures shall be placed on file with the office of the city clerk.

(Ord. No. 42-98, § 1, 12-2-98)

Sec. 18-5-73. City purchase orders and contracts to make reference to this division.

Every city purchase order or contract with a vendor shall make reference to this division, and shall contain prominent and specific instructions to the vendor i) as to the identity of the city employee(s) responsible for monitoring, verifying or accepting the vendor's performance under the contract or purchase order, and ii) as to the procedures, contact person(s), mailing address(es) and time line(s) for the vendor to request payment under the contract or purchase order.

(Ord. No. 42-98, § 1, 12-2-98)

Sec. 18-5-74. Duties of responsible person.

Unless otherwise agreed to in a written contract or purchase order with a vendor, and subject to the provisions of section 18-5-77 of this Code, the responsible person shall take all necessary steps to ensure that payment for the vendor is mailed or delivered to the vendor within forty-five (45) business days after the vendor's delivery to the responsible person of an invoice or other written request for payment issued pursuant to the terms of the contract or purchase order.

(Ord. No. 42-98, § 1, 12-2-98)

Sec. 18-5-75. Correction of defects and errors within invoices.

- a) Where a vendor's invoice or other request for payment pursuant to the terms of a

contract or purchase order contains a defect, an error, or otherwise does not comply with the terms of the contract or purchase order, the responsible person shall notify the vendor of the same within ten (10) business days after the invoice or other request for payment is received by the responsible person.

- b) Where the vendor's invoice or other request for payment under the contract or purchase order is corrected and returned to the responsible person by the vendor within seven (7) business days after the vendor's receipt of the notice referred to in subsection (a) of this section, the responsible person shall ensure that payment is mailed or delivered to the vendor within the forty-five (45) business day period required by section 18-5-74 of this Code.
- c) Each business day over seven (7) business days that the vendor takes to make a correction as referred to in subsection (b) of this section extends the forty-five (45) business day period for payment by a like number of days.

(Ord. No. 42-98, § 1, 12-2-98)

Sec. 18-5-76. Interest on overdue payments.

- a) Except as provided for in section 18-5-75 of this Code, where payment owed to a vendor is past due under section 18-5-74 of this Code, the city department or agency which originated the contract where the delay is attributable to that department or agency, or such other city department or agency where the delay is attributable to that department or agency, shall pay to the vendor interest from its budget in the amount of one-half of one percent (0.5%) of the delinquent payment for the first month, and one percent (1.0%) of the payment for each succeeding month or a portion of each succeeding month, that the payment is past due, in order to collect the interest that is due, the vendor shall not be required to submit a bill, statement, or past due notice.
- b) The city council shall annually review the rates of interest provided for within this section to ensure that such rates are compatible with current market rates and operating capital costs.
- c) Except as provided for in this section, no

vendor shall be paid interest or other late payment charge, and no contract or purchase order shall provide for payment to a vendor of interest or other late payment charge. This section shall not apply where a vendor is paid interest or a late payment charge as may be required or allowed by federal or state law.

(Ord. No. 42-98, § 1, 12-2-98)

Sec. 18-5-77. Effect of dispute.

- a) A payment to a vendor shall not be considered past due, as provided for in section 18-5-76 of this Code, where there is an outstanding disagreement between the responsible person, or any other agent of the city, and the vendor regarding the vendor's request for payment or the vendor's performance of the contract or purchase order.
- b) Within ten (10) business days after an invoice or other request for payment is received, the responsible person shall provide the vendor with a written notice of a disagreement concerning the payment sought by the vendor under the contract or purchase order.
- c) Where any payment is required, such payment shall be due to the vendor within forty-five (45) business days after the disagreement is resolved

(Ord. No. 42-98, § 1, 12-2-98)

Sec. 18-5-79. Applies to contracts and purchase orders after effective date.

This division shall apply only to contracts entered into, or purchase orders issued, after the effective date of this division.

Sec. 18-5-80. Reserved.

Section 2. All ordinances or parts of ordinances, or resolutions, in conflict with the provisions of this ordinance are hereby repealed.

Section 3. This ordinance is declared necessary for the preservation of the peace, health, safety and welfare of the People of the City of Detroit, and shall become effective one hundred and eighty (180) days after publication in accordance with the

applicable provisions of the 1997 Detroit City
Charter.

(J.C.C. P.) November 18, 1998

Passed: December 2, 1998

Approved: December 14, 1998

Published: December 18, 1998

Effective: June 16, 1999

JACKIE L. CURRIE

City Clerk